Civil Miscellaneous Writ Petition no.198 of 2000

Chandra Shekhar Nagila ---------- Petitioner

Versus

The Century Pulp & Paper and another …….. Respondents

And

Civil Miscellaneous Writ Petition no.202 of 2000

Ram Chandra Malani…….. Petitioner

Versus

The Century Pulp & Paper and another …….. Respondents

Hon'ble A.A.Desai, C.J.
Hon'ble Irshad Hussain J.

(Delivered by Hon'ble Irshad Hussain J.)

The petitioners herein have filed the above writ petitions challenging the action of the respondents in dispensing with their services by accepting the letter of resignation dated 17.11.2000 submitted by the petitioner of first mentioned writ petition and by passing an order of dismissal dated 16.11.2000 in regard to the petitioner of the second abovementioned writ petition.

The brief facts are that the petitioner Chandra Shekhar Nagila was appointed as Assistant Engineer in the year 1985 and was later on promoted to the post of senior superintendent. He tendered resignation on 27.11.2000, which was accepted the same day by the respondents. The contention of the petitioner is that the resignation was not voluntary but was forced to submit it under duress. He, therefore, challenged the order of acceptance of the same.

The petitioner Ram Chandra Malani was initially appointed on the post of co-coordinator and by promotion got the post of Assistant Officer in Raw Material Department since 1.12.1995. His services were dispensed with

by order-dated 16.11.2000 and the same has been challenged by the petitioner.

The preliminary objection raised on behalf of the respondent is that the court has no jurisdiction under Article 226 of the Constitution to entertain a writ petition challenging the order of termination of an employee of a private company and that the petitioners have an appropriate remedy before the Civil Court or an Industrial Forum under the provisions of the Industrial Disputes Act, 1947. The preliminary question, which falls for determination in these petitions, is as to whether the respondents are not amenable to writ jurisdiction.

On 14.8.2002 Sri C.D.Bahugana, learned counsel for the petitioners and Sri V.B.Singh assisted by Sri Vijai Sinha, learned counsel for the respondents were heard. Consequent thereof, operative portion in these writ petitions was passed as below:

"The petitions are dismissed. Consequently interim relief as granted earlier stands vacated. Detailed judgment shall follow."

On behalf of the petitioners the learned counsel made submissions to the effect that a writ can be issued under Article 226 of the Constitution "to any person" and the a "person" as defined under section 3 (39) of the General Clauses Act, 1987 includes any company or association or body of individual, whether incorporated or not and therefore a writ cannot necessarily be issued only against the statutory authority and instrumentality of the State. The learned counsel also urged that the term "authority" used under Article 226 of the Constitution must receive a liberal meaning unlike the term under Article 12 of the Constitution and since Article 226 of the Constitution confers power on the High Court to issue writs for the enforcement of non-fundamental rights as well, the present petitions should be held maintainable for adjudication of the rights of the petitioners. The learned counsel pressing reliance on the decision of the Supreme Court in the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and other Vs. V.R. Rudani and others, AIR 1989 SC 1607**, further urged that the words "any person" or "authority" used under Article 226 of the Constitution coveres any other person or body performing public duty and that the form of the body

concerned is not very much relevant but the duty imposed on the body itself. In the view of the learned counsel the right to work is related to the public duty which in the instant case, was being discharged by the respondents-company through its industrial Unit and the State Government has controlled its activities by issuing certain standing orders which have a force of law. Therefore, the respondents-company discharges public function and as such are amenable to writ jurisdiction of this court.

On the other hand, the contention of the learned counsel for the respondents was that the respondents-company is not a government company and therefore, not a State within the meaning of Article 12 of the Constitution. The learned counsel also urged that the respondents-company were not discharging public functions in any way and, therefore, the decision of the Apex Court relied upon by the learned counsel for the petitioners, cannot be utilized for the benefit of the petitioners. The learned counsel for the respondents placed reliance on the decision of the Supreme Court in the case of **VST Industries Ltd. Vs. VST Industries Workers' Union & Anr. JT 2001 (1) SC 36**, in support of his argument. On behalf of the parties certain other case laws were also cited but considering the dispute between the parties there appear to be no need to refer to those cases and it will be suffice to dispose of the matter effectively in view of the principle of law laid down in the aforementioned case by the Apex Court. With reference to the rival submissions mentioned above the controversy stand resolved by the decision of the Apex Court in the case relief upon on behalf of respondents-company. In the case of **VST Industries Ltd. (supra)**, the decision of the Apex Court in **Anandi Mukta's case** was also considered and following the ratio, that, it is only in the circumstances when the 'authority' or the 'person' performs a public function or discharges a public duty jurisdiction under Article 226 of the Constitution can be invoked. It was stressed that if the rights in question is purely of a private character and no corresponding public duty imposed, Article 226 of the Constitution cannot be invoked. In the said case the private company was engaged in the manufacture and sale of cigarettes. The manufacture and sale of cigarettes will not involve any public functions; hence the writ jurisdiction was not found available to the petitioners' workmen of the canteen, which was run for the benefit of the

employees of the company. In the instant case, the respondents-company is engaged in the manufacture and sale of paper, which does not involve any public function and therefore, the petitioners on the basis of ratio of the decision in the said case can very well be held to be not entitled to invoke the writ jurisdiction of the court under Article 226 of the constitution.

In the aforesaid premises and having regard to the relief claimed in the writ petitions, we have no manner of hesitation to come to the conclusion that in these cases the respondents are not amenable to the writ jurisdiction. The writ petitions were liable to be dismissed.

The operative portion referred to above shall form part of this judgment.

(A.A.Desai, C.J.) **(Irshad Hussain,J.)**

October 18th 2022
MPS